IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

LETTERS PATENT APPEAL NO. 176 OF 2006

IN

WRIT PETITION NO. 8106 OF 2005

SHRAMIK MAHASANGH) .. APPELLANT

Versus

M/s. SPECTOMATIC PVT. LTD.) .. RESPONDENTS

Ms. Jane Cox for appellant

Mr. P. K. Rele i/b Piyush Shah for respondent 1

CORAM:-SMT. RANJANA DESAI &

SMT. V.K. TAHILRAMANI, JJ.

DATED:-11/9/2006

P.C.

The appellant Trade-Union claims to represent majoriry of employees of respondent 1. It appears that members of Rashtriya Kamgar Union and Bombay Labour Union joined Krantikari Kamgar Union in 1999, which after amalgamation with other union came to be known as Shramik Mahasangh, the appellant herein.

2. The demands of the workmen of respondent 1 were referred by the Labour Commissioner to the Industrial Tribunal, Thane being Reference

(IT) No. 2/2001. It was the contention of the appellant that M/s. Eva Apparel is a sister concern of respondent 1 and there is financial and manufacturing integrity between the two and hence respondent 1 can bear the burden of demand of M/s. Eva Apparel. According to respondent 1, however, M/s. Eva Apparel is a separate entity. It appears that in the meantime the 1st respondent signed a settlement with Spectomatic Kamgar Sangathana. On 25/8/05 Award was passed by the Industrial Tribunal. The Tribunal held that the appellant had failed to justify its demand. The Industrial Tribunal, however, observed that the benefit of settlement signed by the 1st respondent with the Spectomatic Kamgar Sangathana has to be extended to all the employees irrespective of their loyalty to particular union.

3. Being aggrieved by paragraphs 51 and 55 of the award, 1st respondent preferred a writ petition being Writ Petition No. 9423 of 2005. The appellants preferred Writ Petition No. 8106 of 2005. On 28/11/05, Rule was issued on the appellant's Writ Petition No.8106 of 2005. Ad-interim Relief was granted in terms of prayer clause '(c)', which reads thus;

> '(c) That pending the hearing and final disposal of this Petition this Hon'ble Court may be pleased to stay the operation of the Award of the Respondent No. 3 Learned Member dt.25/08/2005 passed in Reference (IT) No.2/2001 and annexed above at Exhibit-Z.'

The writ petition was kept for further hearing on interim relief after two weeks.

4. On 23/1/06 Rule was issued on Writ Petition No. 9423 of 2005 filed by respondent 1. In view of the interim relief already granted in terms of prayer clause '(c)' in Writ Petition No. 8106 of 2005, the learned Single Judge observed that the same interim relief needs to be granted. Hence interim relief in terms of prayer clause '(b)' was granted. Thus the operation of the impugned Award was stayed. On the same day Writ Petition No. 8106 of 2005 was heard for confirmation of interim relief. The learned counsel for the appellant prayed that interim relief in terms of prayer clause '(d)' of the appellant's petition be granted, which is as under:

> '(d) That pending the hearing and final disposal of this petition this Hon'ble Court may be pleased to direct the Respondent No. 1 Company to pay and extend to the member workmen of the Petitioner by way of annual bonus and as per the Settlements signed between the Respondent Company and the Spectomatic Kamgar Sangathana dated 24/01/2002 & 07/11/2002 (totalling Rs.16,600/- without imposing on the member workmen the terms and conditions of those Settlements.'

5. The learned Single Judge confirmed the interim relief in terms of

prayer clause '(c)' of Writ Petition No. 8106 of 2005 filed by the appellant and rejected the appellant's prayer that interim relief in terms of prayer clause '(d)' of the appellant's petition should be granted on the ground that it may run counter to the prayer clause '(c)' which was confirmed. It is that order which is challenged in this letters patent appeal.

6. We have heard the learned counsel appearing for the parties.

7. It is highly debatable whether the present letters patent appeal is maintainable. However, it is not necessary for us to go into that aspect of the matter because, we are of the opinion, that the learned Single Judge is right in observing that, if the relief prayed for by the appellant is granted, it may run counter to the earlier relief of stay of award which was granted and confirmed, that too at the instance of the appellant. The present letters patent appeal assuming it is maintainable cannot be, therefore, entertained. The learned counsel for the appellant contended that in the interest of justice the learned Single Judge should have directed the 1st respondent to give benefit of the settlement to all the employees without the conditions imposed on the employees of the Spectomatic Kamgar Sangathana because ultimately that could be adjusted against the amount due to the appellant's members, in case the appellants succeed in the writ petition.

8. We are not impressed by this submission. We cannot lose sight of the fact that 1st respondent has also a serious grievance about the fact

that the benefit of settlement has been directed to be given to all the employees. The writ petition filed by the 1st respondent is admitted. During the pendency of both the writ petitions such contradictory prayers cannot be granted. We, therefore, dismiss the letters patent appeal. While dismissing it, however, we expedite both the writ petitions.

9. In the circumstances of the case, in our opinion, the proper course for the appellants as well as the 1st respondent would be to go before the learned Single Judge, for fixing an early date of hearing. We are sure that the learned Single Judge would consider the prayer made by the counsel for the appellants as well as the 1st respondent sympathetically subject of course to his convenience and availability of time.

10. In view of the above, civil application is also dismissed.

(SMT. RANJANA DESAI,J.)

(SMT.) V.K. TAHILRAMANI, J.)